

EXHIBIT 1

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SONOS, INC.,
4 Plaintiff,
5 vs. Case No. 3:21-CV-07559-WHA
6 GOOGLE LLC
7 Defendant.

8 -AND-

9 GOOGLE LLC,
10 Plaintiff,
11 vs. Case No. 3:20-CV-06754-WHA
12 SONOS, INC.,
13 Defendant.

14 **CONFIDENTIAL - ATTORNEYS' EYES ONLY**

15 ZOOM DEPOSITION OF JAMES E. MALACKOWSKI
16 (Reported Remotely via Video & Web Videoconference)

17 Miami, Florida (Deponent's location)

18 Monday, January 30, 2022

19 Volume 1

20 STENOGRAPHICALLY REPORTED BY:

21 REBECCA L. ROMANO, RPR, CSR, CCR
California CSR No. 12546
22 Nevada CCR No. 827
Oregon CSR No. 20-0466
23 Washington CCR No. 3491
24 JOB NO. 5686085
25 PAGES 1 - 297

1 A. I don't believe so. 04:52:15

2 Q. This report is actually a survey about

3 the COVID-19 pandemic and how that effected smart

4 speaker owners and the use of voice assistants,

5 correct? 04:52:28

6 A. It includes discussions regarding the

7 impact of COVID. Given the timing of this report,

8 which is spring of 2020, that's true. But working

9 from home during COVID would also have effects on

10 consumers' use of, for example, the 04:52:46

11 patents-in-suit.

12 Q. You don't know how many times that

13 29 percent of households identified in this survey

14 that have three or more smart speakers have

15 actually used an allegedly infringer -- infringing 04:53:01

16 speaker to set up speaker groups, correct?

17 A. No, I don't know the number of times.

18 Q. You're aware that Google produced usage

19 metrics regarding its grouping functionality?

20 A. Yes. I believe those are discussed in 04:53:25

21 Mr. Bakewell's report.

22 Q. You did not include -- you did not

23 include any analysis of those usage metrics in your

24 calculation for royalties for the Zone Scene

25 patents, correct? 04:53:40

1 A. I don't know what you mean by that 04:53:42
2 question. I did consider Mr. Bakewell's critique
3 and specifically adjusted for his critique with
4 respect to non-Android installation data.

5 Q. Well, I'm referring to the usage metrics 04:54:00
6 regarding usage of the grouping setting up speaker
7 groups.

8 A. Well, I think that's the multi-device
9 expect -- expectation of the MDX data that we
10 talked about earlier. I have not used that 04:54:19
11 specifically for this part of my analysis.

12 Q. You -- you did use the MDX_CASTing usage
13 metrics for calculating royalties for the
14 '033 patent, correct?

15 A. I did. 04:54:35

16 Q. But you did not use a use of metrics for
17 grouping functionality in your reasonable royalty
18 calculations for the Zone Scene patents, correct?

19 A. Correct.

20 Q. Why not? 04:54:50

21 A. Well, the market data point that I use is
22 independent of actual usage. And so, for example,
23 for IFTTT, the same subscription fee applies
24 whether you use the embodied applets once or many
25 times. So in order to match closely the benchmark, 04:55:08

1 I, Rebecca L. Romano, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

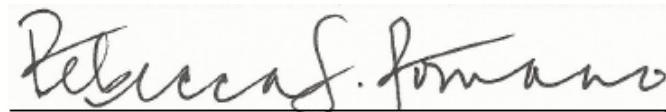
4 That the foregoing proceedings were taken
5 before me remotely at the time and place herein set
6 forth; that any deponents in the foregoing
7 proceedings, prior to testifying, were administered
8 an oath; that a record of the proceedings was made
9 by me using machine shorthand which was thereafter
10 transcribed under my direction; that the foregoing
11 transcript is true record of the testimony given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [X] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21 Dated: February 2, 2023

22
23 
24

25 Rebecca L. Romano, RPR, CCR

CSR. No 12546